

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DERICK OWUSU,

Petitioner,

v.

MARGARET GILBERT,

Respondent.

CASE NO. C20-0500-RSM-BAT

ORDER DENYING PETITIONER'S
MOTION FOR TIME EXTENSION
AND GRANTING ADDITIONAL
TIME TO FILE OBJECTIONS

Petitioner Owusu, proceeding pro se, filed this federal habeas action pursuant to 28 U.S.C. § 2254 on April 14, 2021. Dkt. #1. Respondent filed her answer on June 15, 2021. Dkt. #9. Petitioner's response to the answer was due on July 5, 2021. However, on July 29, 2021, Petitioner moved for a two-month time extension to file his response by September 3, 2021, citing lack of access to the law library and to printed case law due to a new library policy. Dkt. #11. The Honorable Brian A. Tsuchida, United States Magistrate Judge, granted Petitioner's unopposed request for a time extension and extended Petitioner's time to file a response and re-noted the habeas petition to September 10, 2021. Dkt. #12. Petitioner thereafter moved to appoint counsel. Dkt. #13.

Petitioner did not file a response to Respondent's answer. On September 14, 2021, Judge Tsuchida issued a Report and Recommendation ("R & R") recommending that the habeas petition

ORDER DENYING PETITIONER'S MOTION
FOR TIME EXTENSION AND GRANTING
ADDITIONAL TIME TO FILE OBJECTIONS

1 be denied and dismissed and recommending denial of Petitioner's motion to appoint counsel. Dkt.
2 #15. The R & R directed Petitioner to file Objections by September 28, 2021. *Id.* at 16. On
3 September 15, 2021, Petitioner filed the instant motion for extension of time to respond to
4 Respondent's answer until November 5, 2021, citing recovery from eye surgery. Dkt. #16. He
5 states that his eye surgery was performed on August 16, 2021, after which he was in recovery and
6 unable to work on his case. *Id.* at 1-2. He also states that in the weeks before his surgery, he was
7 unable to access the law library due to his conflicting degree program. *Id.* at 2. Attached to his
8 motion is correspondence between Petitioner and a law librarian, wherein the librarian denied
9 Petitioner's July 29, 2021 request to access the law library at a different time that did not conflict
10 with his school schedule. *See* Dkt. #16-1 at 4.

11 Where a motion is made to extend a deadline after the deadline has expired, the party
12 seeking the extension must show excusable neglect. *See* Fed. R. Civ. P. 6(b)(1)(B). Here, Plaintiff
13 filed his motion for a time extension after the noting date and after Judge Tsuchida issued the R &
14 R. The Court cannot find excusable neglect based on his August 16, 2021 eye surgery and inability
15 to access the law library in the intervening time since the Court granted his first request for a time
16 extension on July 29, 2021. For that reason, his motion to extend the time to file a response to
17 Respondent's answer is DENIED.

18 Nevertheless, the Court finds that Plaintiff's motion provides sufficient basis to extend his
19 time to file objections to the R & R. Although objections were due by September 28, 2021,
20 Plaintiff filed his motion for a time extension on September 15, 2021. *See* Dkt. #16. The Federal
21 Rules of Civil Procedure allow a court to extend the time before a deadline elapses for "good
22 cause." Fed. R. Civ. P. 6(b)(1)(A). Here, the Court finds that Petitioner has presented sufficient
23 good cause to extend the deadline to file objections by fourteen (14) days from the date of this

ORDER DENYING PETITIONER'S MOTION
FOR TIME EXTENSION AND GRANTING
ADDITIONAL TIME TO FILE OBJECTIONS

Order, on **November 5, 2021**.

CONCLUSION

Having reviewed Petitioner's Motion and the exhibits and declaration attached thereto, the Court hereby ORDERS:

(1) Petitioner's Motion for an Extension of Time to file a response to Respondent's answer, Dkt. #16, is DENIED.

(2) The Court will extend Petitioner's deadline to file objections to the R & R to **November 5, 2021**. If objections are filed, any response is due within 14 days after being served with the objections. Objections and responses shall not exceed 12 pages. Failure to timely object may affect the right to appeal.

DATED this 22nd day of October, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE